IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10211 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRUTLAL K SHARMA - Petitioner(s)
Versus
DAHYABHAI JIBHAIBHAI - Respondent(s)

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Appearance :
MR TRILOK J PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
MR GOVIND V PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/04/2007

ORAL JUDGMENT

1. Shri Trilok Patel,learned counsel for the petitioner; Shri G.V. Patel, learned counsel for

the respondent.

2. The case has a chequered history which starts right from 1951-52. According to the petitioners, respondent was not in possession of the suit lands in the year 1951-52 and was also not cultivating the property. However, on 28.10.56, a mutation entry no. 1920 was made in the revenue records under which name of the present respondent was deleted as he was not cultivating the suit land and name of the present petitioner being in cultivating possession was recorded. Somewhere in the year 1961, Mamlatdar cum ALT commenced proceedings under Section 32-G of the Bombay Land Revenue Code, granted proper opportunity to the parties to lead evidence and after holding that the respondent was not a tenant vide his judgment dated 8.6.61 directed to drop the proceedings. The said order was not challenged by any party.

3. On 28.6.66, in pursuance of the said order, a mutation entry no. 2638 was made. It is to be noted that up to 1966, earlier order dated 8.6.61 holding that the present respondent was

not a tenant and was not in cultivating possession was not challenged by the petitioner and the same attained finality. On 20.12.76, the present respondent made an application before the Mamlatdar seeking an order under Section 31[1][B] and under Section 32FF of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereafter referred as “the Act”]. Thereafter, various proceedings were conducted, the matters were taken up to the Revenue Tribunal and there were remands. On 9.1.80, the Mamlatdar made an order that the matter should be conducted under Section 32G of the Act. On 28.7.80, the said order was set aside by the Deputy Collector and the matter was remanded back to the Mamlatdar. The matter ultimately went to the Tribunal, who, vide order dated 1.6.88, directed that Mamlatdar should hold an inquiry under Section 70[b] of the Act. The Mamlatdar initiated proceedings under the said Section and held that the respondent was entitled to an order in his favour. The order was set aside by the Deputy Collector in appeal, but the order passed by the

Mamlatdar was restored by the Revenue Tribunal in Revision Application No. TEN.B.A. 356/93, therefore, the petitioner-landlord is before this Court.

4. Shri Trilok Patel, learned counsel for the petitioners submits that once an order under Section 32G of the Act attains finality, then, such order would bind the parties forever unless it is shown that the order was patently illegal or was contrary to the provisions of law. His further submission is that under Section 32G of the Act, status of a tenant is to be decided and if it is decided that the person claiming to be a tenant was not a tenant, then, that finding would be binding forever upon such alleged tenant if the order is allowed to attain finality. His further submission is that Section 32[1B] came in statute book in the year 1973 under the Gujarat Act No.5 of 1973. According to him, Section 32[1B] authorizes a tenant who was in possession of the land on the appointed date and was dispossessed except in accordance with law to make an application for restoration of

possession and payment of price to the landlord. His submission is that an application under Section 31[1B] would not be maintainable in view of the order passed under Section 32G of the Act. It was lastly submitted that the Revenue Tribunal was also unjustified in holding that the application filed under Section 32[1B] could be treated as an application under Section 70[b] of the Act. His submission is that Section 70 clothes the Mamlatdar to decide the dispute that whether a person is or was at any time in the past, a tenant or a protected tenant or a permanent tenant. But in case, the question is already decided by the Mamlatdar, then, proceedings under Section 70[b] cannot be initiated afresh.

5. Shri G.V. Patel, learned counsel for the respondent on the other hand, submits that rejection of the application filed under Section 32G would not come over the rights conferred upon a tenant under the newly introduced Section 31[1B] of the Act, his submission is that earlier inquiry was confined to Section 32G

only, while the present application was for an inquiry under the new rights conferred upon the tenant. His submission is that the Revenue Tribunal was absolutely justified in directing the Mamlatdar to hold an inquiry under Section 70[b] of the Act, because present was a case where question to be decided was that the respondent was a tenant or not.

6. Section 32G was in the statute book right from the inception. Section 32G provides that Mamlatdar cum ALT, as soon as may be after the tiller's day shall publish or cause to be published a public notice in the prescribed form in each village within his jurisdiction calling upon all tenants who under Section 32 are deemed to have purchased the lands and all landlord of such lands and all other persons interested in the land to appear on the date specified in the notice and after holding an inquiry in accordance with law, the Tribunal shall decide status of the person and shall thereafter pass appropriate orders. Section 32G of the Act confers jurisdiction upon the Mamlatdar cum ALT

to make an inquiry and record a finding that whether the person appearing before him is a tenant or not. If the authority finds that he was not a tenant, then, such Mamlatdar shall not pass any further orders, but in case he finds that such person is/was a tenant, then, the Tribunal shall fix the purchase price and would offer land to such tenant who on deposit of the price would become absolute owner of the property.

7. Section 32[1B], as I have already found, has come in the statute book in the year 1973. Section 32[1B] says that where a tenant who was in possession of the land on the appointed date, who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date other wise than in the manner provided in Section 29 or any other provision of the Act, is not in possession of such land or any part thereof etc., then, the Mamlatdar shall notwithstanding anything contained in the said Section 29 or other provisions of the Act either suo motu or on an

application by the tenant made within prescribed period, hold an inquiry and direct that the land be restored in favour of the tenant or if the tenant is in possession, then, he shall fix purchase price to be paid by the tenant to the landlord. Undisputely, the period for making an application under Section 32[1B] is one year from the date of enforcement of the Act. The Act came in force in the year 1973, therefore, an application could be made within one year only. In the present case, application under Section 32[1B] came to be made on 20.12.76, that is, almost after a period of three years. Such application was undisputedly time barred. Even if it is taken to be within the limitation, then, the order passed under Section 32G of the Act whereunder status of the parties were already decided would always stare in the face of the present respondent and the authorities. Once it is held by any competent authority that the alleged tenant was not a tenant for purposes of Section 32G, then, the Mamlatdar or any other revenue authority, contrary to the said order

would not be entitled to hold that for purposes of Section 32[1B] such person would be deemed to be a tenant. Once a finding recorded in the earlier proceedings attains finality, then, such order would always be res judicata between the parties or in any case, if principles underlying Section 11 of the Code of Civil Procedure are not applicable, then too, such order would still be binding upon the parties, because, the law does not say that on conclusion of the first proceedings, on the same facts, next set of the proceedings can be commenced. If second proceedings are held to be maintainable, then, this would become endless, because, on conclusion of the second proceedings against interest of such applicant, he would go for third proceedings and so on.

8. The Gujarat Revenue Tribunal, in the opinion of this Court, also erred in holding that proceedings should be taken to be under Section 70[b] of the Act. Section 70 simply says that for purposes of the Act, it shall be the duty and function to be performed by the Mamlatdar

to decide whether a person is or was at any time in the past, a tenant or protected tenant or permanent tenant. The powers are to be exercised at different stages. The powers, once exercised would exhaust. In the present case, the first inquiry made under Section 32G of the Act was within the sweep and scope of Section 70[b] of the Act. Any inquiry if is to be made by the Mamlatdar, then, he has to assume jurisdiction under Section 70[b] of the Act and made an inquiry and only then, he can proceed to decide that the claimant before him is/was a tenant or not. Once such inquiry is made and the order attains finality, then, another inquiry with the help and assistance of Section 70[b] of the Act cannot be made. If powers were once exercised then on the same facts, the authority would not be entitled to re-examine the issue and exercise powers under the garb of Section 70[b] of the Act.

9. As the proceedings under Section 32G had concluded the fate of the present respondent holding that he was not a tenant and was not

entitled to any benefits under Section 32G of the Act, then, such finding would be binding upon the respondent for all practical purposes and second application to make an inquiry into the status of the respondent would not be maintainable.

10. In the opinion of this Court, the learned Tribunal so also the Mamlatdar were absolutely unjustified in holding that the respondent being a tenant was entitled to an order under Section 31[1B] read with Section 70[b] of the Bombay Tenancy & Agricultural Lands Act, 1948. The application dated 20.12.76 filed by the respondent is rejected. All such orders adverse to the interest of the petitioners are quashed.

11. The petition is allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

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